



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 10 2008

Joseph M. Birkenstock, Esquire
Caplin & Drysdale
One Thomas Circle, N.W.
Suite 1100
Washington, D.C. 20005

RE: MUR 5379
Miguel B. Fernandez, CAC-Florida Medical
Centers, LLC (f/k/a CarePlus Medical Centers,
Inc.) and CarePlus Health Plans, Inc.

Dear Mr. Birkenstock:

On August 19, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of CAC-Florida Medical Centers, LLC (f/k/a CarePlus Medical Centers, Inc.) and CarePlus Health Plans, Inc. in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). On the same date, the Commission voted to take no further action as to Miguel B. Fernandez. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Gould".

Jack Gould
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 5379
CAC-Florida Medical Centers, LLC)	
(f/k/a CarePlus Medical Centers, Inc.))	
CarePlus Health Plans, Inc.)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by Ryan Hampton. The Federal Election Commission ("the Commission") found reason to believe that the Respondents violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and CAC-Florida Medical Centers, LLC and CarePlus Health Plans, Inc. ("Respondents"), having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. CAC-Florida Medical Centers, LLC (formerly known as CarePlus Medical Centers, Inc. and referred to hereinafter as "CPMC") is a corporation within the meaning of 2 U.S.C. § 441b(a).

2. CarePlus Health Plans, Inc. ("CPHP") is a corporation within the meaning of 2 U.S.C. § 441b(a).

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3. Miguel B. Fernandez was, at all relevant times, President and Chief Executive Officer of CPMC, and Chairman and Chief Executive Officer of CPHP.

4. Heriberto Valdes was, at all relevant times, Vice President and Chief Operating Officer of CPMC.

Applicable Law

5. The Federal Election Campaign Act of 1971, as amended ("the Act"), makes it unlawful for corporations to make contributions or expenditures in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). Corporate officers and directors are prohibited from consenting to such contributions or expenditures. *Id.* The terms "contribution" and "expenditure" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in" Section 441b. 2 U.S.C. § 441b(b)(2).

6. Because corporations can only act through their agents, officers, and directors, corporations are held liable for the actions of their officers committed within the scope of employment. Accordingly, the conduct of Mr. Fernandez and Mr. Valdes, as described below, is imputed to CPHP and CPMC.

7. The Act's prohibition on corporate contributions includes facilitating the making of contributions to candidates or political committees. 11 C.F.R. § 114.2(f)(1). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.* Examples of facilitating the making of contributions include, but are not limited to: fundraising activities by corporations that involve officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out a

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fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services,¹ and using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. 11 C.F.R. § 114.2(f)(2).

Facts

8. Alex Penelas, Mayor of Miami-Dade County, Florida ("Mayor Penelas"), was a candidate for the U.S. Senate from Florida during the 2004 election cycle. Mayor Penelas' principal campaign committee was "Alex Penelas US Senate Campaign" ("the Penelas Committee").

9. In early 2003, Mr. Fernandez agreed to help raise money for Mayor Penelas' campaign and enlisted the aid of CPMC's Vice President, Heriberto Valdes, and his executive assistant, Elizabeth Ricard.²

10. On March 24, 2003, Mr. Valdes, acting within the course and scope of his employment as Vice President of CPMC, sent an e-mail directed to administrators of CPMC's patient care centers that stated the following:

The following is directed to all physicians and executive level staff at CarePlus Medical Centers Inc. Mr. Michael B. Fernandez, owner and Chief Executive Officer of CarePlus Medical Centers Inc. is asking for your help.

Alex Penelas, Dade County Mayor and strong supporter of Mike Fernandez and CarePlus Medical Centers is running for United States Senate. He has been working closely with Mr. Mike Fernandez and other community

¹ Corporate employees may make occasional, isolated or incidental use of corporate facilities for their own individual volunteer activities in connection with a Federal election provided that such activity does not exceed one hour per week or four hours per month and the corporation is reimbursed for certain costs incurred by such activity. 11 C.F.R. § 114.9(a).

² Ms. Ricard worked for Mr. Fernandez in connection with both CPMC and CPHP.

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leaders to effect change in the indigent care programs that could represent opportunities for companies like ours to increase revenue while serving our indigent population and providing alternatives other than Jackson Memorial Health Systems.

Mr. Mike Fernandez is asking each of you for a \$1,000.00 campaign contribution for the Alex Penelas for Senate Campaign. The deadline for this contribution is Friday the 28th. He has asked for an accounting of the individuals that donate and those that did not. He will be contacting the individuals that donate to thank you personally. I am sure you are probably wondering why Mike Fernandez does not make the contribution himself. I am sure he would if he could. It would be illegal, as individual maximum allowable contributions are \$2,000.00. As painful as this may seem, it will not be any easier tomorrow so pull out your checkbooks and write the check today to the order of Alex Pinelas [sic] for Senate and the check must be dated April 2, 2003 or later.

All physicians, large vendors and executive level staff will be expected to donate. The center administrator has been assigned to collect and submit the contributions to Ed Rubio, Director of Operations.

11. Respondents contend that contrary to the representations in Mr. Valdes' e-mail, that message did not speak on Mr. Fernandez's behalf. Respondents further contend that the e-mail was sent without Mr. Fernandez' awareness, much less his authorization, and did not accurately convey the circumstances of his relationship with Mayor Penelas. In fact, Mr. Fernandez was out of the country at the time the e-mail was sent, and did not learn of Mr. Valdes' email until he returned to the United States.

12. The Commission has concluded that the e-mail was coercive within the meaning of 11 C.F.R. § 114.2(f)(2). Respondents do not contest this conclusion. Mr. Valdes' e-mail indicated that certain recipients would be "expected" to contribute to the Penelas Committee, claimed to set a "deadline" for the contributions, urged recipients that "[a]s painful as this may seem, it will not be any easier tomorrow," and claimed that Mr. Fernandez, the President and CEO of CPMC, planned to monitor who contributed and who did not. The Commission concludes that contributions received in response to a solicitation with language like this are

considered to have been made involuntarily, and Respondents likewise do not contest this conclusion.

13. After sending the e-mail, and while Mr. Fernandez was still out of the country, Mr. Valdes initiated further discussion at CPMC about fundraising for Mayor Penelas' campaign, and requested other management-level staff under his supervision to assist with the fundraising activities. The Penelas campaign was discussed during meetings with administrators and "Physicians-In-Charge" at the company's corporate offices. Some of the administrators also handed out copies of Mr. Valdes' e-mail to doctors. Ultimately, a number of physicians and administrators wrote checks to the Penelas campaign in the wake of Mr. Valdes' e-mail message. All these checks were later returned to the donors.

14. On March 30, 2003, the *Miami Herald* published an article that quoted and paraphrased most of Mr. Valdes' e-mail, including the statement about who was expected to contribute to the Penelas campaign. See Jim DeFede, *Fundraising Effort Raises Concerns*, *Miami Herald*, at 1B.

15. Shortly after learning of the email from Mr. DeFede, on April 1, 2003, Mr. Fernandez sent a new e-mail to CPMC's administrators in which he told the administrators to disregard Mr. Valdes' e-mail and directed them to return all of the contributions collected as a result of Valdes' e-mail. Mr. Fernandez further informed the administrators that he personally intended to hold a fundraiser for Mayor Penelas in the future and that anyone interested could contribute at that time.

16. On May 8, 2003, Mr. Fernandez held a fundraiser at his house to benefit Mayor Penelas. In late February 2003, Mr. Fernandez directed Ms. Ricard to perform several tasks during working hours, using company equipment and office supplies, in connection with a personal fundraiser Mr. Fernandez was planning to hold for Mayor Penelas in April 2003. At

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Mr. Fernandez's direction, Ms. Ricard typed and sent a memorandum from Mr. Fernandez to 10 CPMC and CPHP executives, vendors, and family members soliciting campaign contributions for Mayor Penelas' campaign. In addition, Ms. Ricard prepared the invitation for Mr. Fernandez's fundraiser; she prepared spreadsheets of the contributions pledged and received; and she typed letters and address labels for the invitations to Mr. Fernandez's fundraiser.

17. Ms. Ricard did not volunteer to work for Mayor Penelas' campaign; rather, she performed the fundraising tasks because Mr. Fernandez directed her to do so as his administrative assistant. Accordingly, her work could not qualify for the safe harbor for individual volunteer activity.

18. Neither Ms. Ricard nor Mr. Fernandez reimbursed CPMC or CPHP for Ms. Ricard's use of company equipment and office supplies. Neither CPMC nor CPHP received advance payment for the fair market value of Ms. Ricard's services from Mr. Fernandez or the Penelas Committee. 11 C.F.R. § 114.2(f)(2)(i)(A).

19. Respondents contend that Mr. Fernandez relied on Ms. Ricard to handle these kinds of logistical and administrative arrangements for all his business, personal, charitable, and other philanthropic endeavors in order to free him up to address his business obligations without distraction. Mr. Fernandez contends he was not aware that such corporate-provided services were impermissible when used in connection with federal political activity.

20. At Mr. Fernandez's May 8, 2003 fundraiser for Mayor Penelas, \$81,400 in campaign contributions were collected and forwarded to the Penelas Committee.

21. Mr. Fernandez also consented to an expenditure CPHP made in the amount of \$3,325.85 to pay Pepe Luzarraga Catering Corp. ("PLCC") for catering services provided at his May 8th fundraiser for Mayor Penelas. Mr. Fernandez contends he mistakenly approved payment

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by CPHP for the PLCC invoice for the fundraiser catering when approving a variety of other invoices for catering that PLCC provided to CPHP for business functions. After discovering, over a year after the event, that CPHP paid for the catering services for the fundraiser, Mr. Fernandez, his wife, and his son each reimbursed CPHP \$1,000 for their respective shares of the catering services and the Penelas Committee reimbursed CPHP \$325.85 for the remainder.³

V. Violations

1. CAC-Florida Medical Centers, LLC violated 2 U.S.C. § 441b(a) by facilitating the making of contributions to the Alex Penelas US Senate Campaign.
2. CarePlus Health Plans, Inc. violated 2 U.S.C. § 441b(a) by facilitating the making of contributions to the Alex Penelas US Senate Campaign, and by making an expenditure of corporate funds, in connection with Miguel B. Fernandez's fundraiser for the Alex Penelas US Senate Campaign.

VI. 1. CAC-Florida Medical Centers, LLC will pay a civil penalty to the Federal Election Commission in the amount of Sixty-Six Thousand Dollars (\$66,000) pursuant to 2 U.S.C. § 437g(a)(5).

2. CarePlus Health Plans, Inc. will pay a civil penalty to the Federal Election Commission in the amount of Sixty-Two Thousand Dollars (\$62,000) pursuant to 2 U.S.C. § 437g(a)(5).

3. Respondents will cease and desist from violating 2 U.S.C. § 441b(a).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance

³ Because the fundraiser was held at Mr. Fernandez's home, which he shares with his wife and his son, Mr. Fernandez, his wife, and his son were each entitled to provide up to \$1,000 in food and beverages for the fundraiser. See 11 C.F.R. § 100.77.

with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

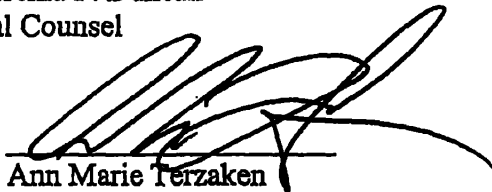
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

Date

9/10/08

FOR THE RESPONDENTS:


Joseph M. Birkenstock, Esq.
Counsel for Respondents

Date

4/7/08

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